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Presidential Documents

Title 3—

The President

Executive Order 13552 of August 31, 2010

2010 Amendments to the Manual for Courts-Martial, United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Parts II and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached and made a part of this order.

Sec. 2. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

THE WHITE HOUSE,
August 31, 2010.

Billing code 3195–W9–P

ANNEX

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 1003(b)(3) is amended to read as follows:

"(3) *Fine.* Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. In the case of a member of the armed forces, summary and special courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In the case of a person serving with or accompanying an armed force in the field, a summary court-martial may not adjudge a fine in excess of two-thirds of one month of the highest rate of enlisted pay, and a special court-martial may not adjudge a fine in excess of two-thirds of one year of the highest rate of officer pay. To enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

(b) R.C.M. 1003(c) is amended by renumbering subparagraph (4) as subparagraph (5) and adding a new subparagraph (4) to read as follows:

"(4) *Based on status as a person serving with or accompanying an armed force in the field.* In the case of a person serving with or accompanying an armed force in the field, no court-martial may adjudge forfeiture of pay and allowances, reduction in pay grade, hard labor without confinement, or a punitive separation."

(c) R.C.M. 1106(d) is amended to read as follows:

"(d) *Form and content of recommendation.*

(1) The purpose of the recommendation of the staff judge advocate or legal officer is to assist the convening authority to decide what action to take on the sentence in the exercise of command prerogative. The staff judge advocate or legal officer shall use the record of trial in the preparation of the recommendation, and may also use the personnel records of the accused or other matters in advising the convening authority whether clemency is warranted.

(2) *Form.* The recommendation of the staff judge advocate or legal officer shall be a concise written communication.

(3) *Required contents.* Except as provided in subsection (e), the staff judge advocate or legal advisor shall provide the convening authority with a copy of the report of results of the trial, setting forth the findings, sentence, and confinement credit to be applied; a copy or summary of the pretrial agreement, if any; any recommendation for clemency by the sentencing authority, made in conjunction with the announced sentence; and the staff judge advocate's concise recommendation.

(4) *Legal errors.* The staff judge advocate or legal officer is not required to examine the record for legal errors. However, when the recommendation is prepared by a staff judge advocate, the staff judge advocate shall state whether, in the staff judge advocate's opinion, corrective action on the findings or sentence should be taken when an allegation of legal error is raised in matters submitted under R.C.M. 1105 or when otherwise deemed appropriate by the staff judge advocate. The response may consist of a statement of agreement or disagreement with the matter raised by the accused. An analysis or rationale for the staff judge advocate's statement, if any, concerning legal error is not required.

(5) *Optional matters.* The recommendation of the staff judge advocate or legal officer may include, in addition to matters included under subsection (d)(3) and (4) of this rule, any additional matters deemed appropriate by the staff judge advocate or legal officer. Such matter may include matters outside the record.

(6) *Effect of error.* In case of error in the recommendation not otherwise waived under subsection (f)(6) of this rule, appropriate corrective action shall be taken by appellate authorities without returning the case for further action by a convening authority."

(d) R.C.M. 1113(d)(2)(A)(iii) is amended to read as follows:

"(iii) Periods during which the accused is in custody of civilian or foreign authorities after the convening authority, pursuant to Article 57a(b)(1), has postponed the service of a sentence to confinement."

(e) R.C.M. 1113(d)(2)(C) is amended by deleting the last two sentences, and replacing them with the following:

"No member of the armed forces, or person serving with or accompanying an armed force in the field, may be placed in confinement in immediate association with enemy prisoners or with other foreign nationals not subject to the code. The Secretary concerned may prescribe regulations governing the place and conditions of confinement."

Sec. 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 32, Article 108, Military Property of the United States—sale, loss, damage, destruction, or wrongful disposition, paragraph c.(1) is amended to read as follows:

"(1) Military Property. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, not all government property is military property. An item of government property is not military property unless the item in question meets the definition provided above. It is immaterial whether the property sold, disposed, destroyed, lost, or damaged had been issued to the accused, to someone else, or even issued at all. If it is proved by either direct or circumstantial evidence that items of individual issue were issued to the accused, it may be inferred, depending on all the evidence, that the damage, destruction, or loss proved was due to the neglect of the accused. Retail merchandise of service exchange stores is not military property under this article."

(b) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

"(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(c) Paragraph 46, Larceny and wrongful appropriation, the Note following paragraph b.(1)(d) is amended to read as follows:

"[Note: If the property is alleged to be military property, as defined in paragraph 46.c.(1)(h), add the following element]"

(d) Paragraph 46, Larceny and wrongful appropriation, is amended by re-lettering paragraph 46.c.(1)(h) as paragraph 46.c.(1)(i), and adding a new paragraph 46.c.(1)(h) as follows:

"(h) *Military Property*. Military property is all property, real or personal, owned, held, or used by one of the armed forces of the United States. Military property is a term of art, and should not be confused with government property. The terms are not interchangeable. While all military property is government property, not all government property is military property. An item of government property is not military property unless the item in question meets the definition provided above. Retail merchandise of service exchange stores is not military property under this article."

Changes to the Discussion accompanying the Manual for Courts-Martial, United States

(a) Paragraph (4) of the Discussion immediately after R.C.M. 202(a) is amended to read as follows:

"(4) *Limitations on jurisdiction over civilians.* Court-martial jurisdiction over civilians under the code is limited by the Constitution and other applicable laws, including as construed in judicial decisions. The exercise of jurisdiction under Article 2(a)(11) in peace time has been held unconstitutional by the Supreme Court of the United States. Before initiating court-martial proceedings against a civilian, relevant statutes, decisions, service regulations, and policy memoranda should be carefully examined."

(b) The first paragraph of the Discussion following R.C.M. 1003(b)(3) is amended to read as follows:

"A fine is in the nature of a judgment and, when ordered executed, makes the accused immediately liable to the United States for the entire amount of money specified in the sentence. A fine normally should not be adjudged against a member of the armed forces unless the accused was unjustly enriched as a result of the offense of which convicted. In the case of a civilian subject to military law, a fine, rather than a forfeiture, is the proper monetary penalty to be adjudged, regardless of whether unjust enrichment is present."

Changes to Appendix 21, Analysis of Rules for Courts-Martial

(a) Add the following to the Analysis accompanying R.C.M. 1106(d):

"*2010 Amendment:* Subsection (d) is restated in its entirety to clarify that subsections (d)(4), (d)(5) and (d)(6) were not intended to be eliminated by the 2008 Amendment.

2008 Amendment: Subsections (d)(1) and (d)(3) were modified to simplify the requirements of the staff judge advocate's or legal officer's recommendation."

Changes to Appendix 23, Analysis of Punitive Articles

(a) Add the following to the Analysis accompanying Paragraph 44, Article 119 - Manslaughter:

"b. *Elements.*

2010 Amendment: Paragraph (4) of the elements is corrected to properly reflect the 2007 Amendment, which corrected wording not included in the 2008 Amendment.

2008 Amendment: Notes were included to add an element if the person killed was a child under the age of 16 years.

e. *Maximum punishment.*

2008 Amendment: The maximum confinement for voluntary manslaughter when the person killed was a child under the age of 16 years was increased to 20 years. The maximum confinement for involuntary manslaughter when the person killed was a child under the age of 16 years was increased to 15 years."

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